

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

JOSHUA AUGUST CLARK,

Plaintiff,

Hon. Paul L. Maloney

v.

Case No. 1:24-cv-39

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

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REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff Counsel's Motion for Attorney Fees. (ECF No. 13). The Court recently remanded this matter for further administrative action pursuant to sentence four of 42 U.S.C. § 405(g). Plaintiff's counsel now seeks \$5,738.45 in fees and \$405.00 in costs. Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that counsel's motion be granted.

Pursuant to the Equal Access to Justice Act (EAJA), the prevailing party in an action seeking judicial review of a decision of the Commissioner of Social Security may apply for an award of fees and costs. See 28 U.S.C. § 2412(d)(1)(A). While a prevailing party is not entitled, as a matter of course, to attorney fees under the EAJA, *see United States v. 0.376 Acres of Land*, 838 F.2d 819, 825 (6th Cir. 1988), fees and costs are to be awarded unless the Court finds that the Commissioner's position was "substantially justified" or that "special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

The Commissioner has not opposed counsel's motion. Moreover, the amount requested in fees is reasonable. Counsel's request to be reimbursed for the \$405 filing fee is also compensable. See 28 U.S.C. §§ 1920, 2412(a)(1); *Harrington v. Commissioner of Social Security*, 2020 WL 8224963 (W.D. Mich., Dec. 28, 2020). Accordingly, the undersigned recommends that EAJA fees be awarded in the amount of six thousand, one hundred forty-three dollars and forty-five cents (\$6,143.45). However, in light of the Supreme Court's decision in *Astrue v. Ratliff*, 560 U.S. 586 (2010), this order awarding EAJA fees must be entered in Plaintiff's favor. *Id.* at 591-93; see also, 28 U.S.C. § 2412(d)(1)(A) (the EAJA awards fees "to a prevailing party"); *Kerr v. Commissioner of Social Security*, 874 F.3d 926, 934-35 (6th Cir. 2017) (reaffirming that *Astrue* requires EAJA fees to be paid to the claimant).

CONCLUSION

For the reasons articulated herein, the undersigned recommends that Plaintiff Counsel's Motion for Attorney Fees (ECF No. 13) be granted. Specifically, the undersigned recommends that Plaintiff be awarded six thousand, one hundred forty-three dollars and forty-five cents (\$6,143.45) pursuant to the EAJA and that such be paid directly to Plaintiff.

OBJECTIONS to this report and recommendation must be filed with the Clerk of Court within fourteen days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within such time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Respectfully submitted,

Date: August 8, 2024

/s/ Phillip J. Green
PHILLIP J. GREEN
United States Magistrate Judge